8/31/01

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Paper No. 12
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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re TGC, Inc.

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Serial No. 75/660,925

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Leslie A. Bertagnolli of Baker & McKenzie for TGC, Inc.

Darlene D. Bullock, Trademark Examining Attorney, Law Office 111 (Craig Taylor, Managing Attorney).

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Before Quinn, Hairston and Wendel, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

TGC, Inc. has appealed from the final refusal of the Trademark Examining Attorney to register the mark shown below,

for:

> promoting and organizing golf-related sporting events, promoting the sale of the goods and/or services of others by arranging for sponsors to affiliate their goods and services with golf-related sporting events and occurrences, advertising and business services, namely, the preparation of audiovisual programs, commercials and other communications media for others (Class 35);
>
> cable, wireless cable and/or satellite television broadcasting services for golf-related subject matter (Class 38); and
>
> producing and distributing entertainment and educational programming to cable, wireless cable and/or satellite television broadcasting systems featuring golf-related subject matter and providing golf-related information via a global information network (Class 41).[1]

Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark "TGC THE GOLF CLUB" for "mail order brochure services featuring golf equipment",[2] that as used in connection with applicant's identified services, it is likely to cause confusion or mistake or to deceive.

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[1] Serial No. 75/660,925 filed March 15, 1999; based on applicant's allegation that it has a bona fide intent to use the mark in commerce.

[2] Registration No. 1,979,656 issued June 11, 1996. The phrase "THE GOLF CLUB" is disclaimed apart from the mark as shown.

Both applicant and the Examining Attorney have filed briefs; an oral hearing was not requested.

Our determination is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the services. Federated Foods, Inc. v. Fort Howard Paper Co., 844 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Turning first to the marks, it is applicant's position that the marks are different in appearance, sound and meaning. Applicant argues that the cited mark "contains nothing in the way of logos or distinctive elements" and that the dominant feature therein is the phrase THE GOLF CLUB. Applicant argues that this is in contrast to its mark which consists of a prominent "G" design that is the broadcast emblem of applicant's cable television channel known as *The Golf Channel*. Also, applicant maintains that purchasers who use registrant's mail order services to purchase golf equipment will be aware that the letter combination TGC in registrant's mark is an abbreviation for THE GOLF CLUB.

In this case, we agree with the Examining Attorney that the commercial impressions engendered by the marks are substantially similar. While marks must be compared in their entireties, it is nevertheless the case that, in articulating reasons for reaching a conclusion on the issue of likelihood of confusion, "there is nothing wrong in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided [that] the ultimate conclusion rests on a consideration of the marks in their entireties." In re National Data Corp., 753 F.2d 1056, 324 USPQ 749, 751. For instance, "that a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark . . ." 224 USPQ at 751.

In this case, the cited mark is dominated by the letter combination TGC, not only because the disclaimed phrase THE GOLF CLUB is descriptive of registrant's services, but also because TGC is the initial portion of the mark. As the first part of the mark, TGC has the more immediate impact. Thus, when we compare the cited mark with applicant's mark, it is TGC which is entitled to greater weight. It is also TGC which is the dominant portion of applicant's mark as purchasers and prospective

purchasers would use TGC in calling for applicant's services. There is no question that the "G" design is a noticeable part of applicant's mark, and if we were making a side-by-side comparison of applicant's and registrant's marks, the "G" design would be obvious. This, however, is not the proper test. It is the overall commercial impression which will be recalled over a period of time which must be taken into account in determining likelihood of confusion.

Even assuming that, as applicant argues, purchasers of registrant's services will recognize that TGC in registrant's mark is an abbreviation for THE GOLF CLUB, such purchasers encountering applicant's mark for the first time could well believe that TGC therein is also an abbreviation for THE GOLF CLUB. Moreover, although we recognize that the "G" design is applicant's broadcasting emblem, purchasers not familiar with applicant may well believe that the "G" simply stands for "golf."

In sum, we find that the commercial impressions of applicant's and registrant's marks are substantially similar, and thus confusion would be likely if the marks are used in connection with identical or related services.

Considering next the services, applicant argues that the only relationship between them is that they both

involve golf, which is an insufficient basis for a finding of likelihood of confusion. Further, applicant argues that the services move in different channels of trade, namely, registrant's services are rendered by mail order whereas applicant's services are offered through television broadcasts. Finally, applicant maintains that purchasers are not likely to believe that the parties are affiliated or connected because:

> To do so, consumers would have to conclude that a mail order service provider suddenly engages in the entirely unrelated business of television programming and broadcasting, a business [that] is entirely unknown to the owner of the senior cited mark, that requires extremely high capital investments and highly specialized expertise in obtaining, using and broadcasting programming content.

As has frequently been stated, it is not necessary that services be identical or even competitive in nature in order to support a finding of likelihood of confusion. It is sufficient that the services are related in some manner and/or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under circumstances that would give rise, because of the marks used in connection therewith, to the mistaken belief that the services originated from or are in some way associated with the same source. In re

International Telephone & Telegraph Corp., 197 USPQ 910 (TTAB 1978).

In this case, while we recognize that applicant's and registrant's services move in different channels of trade, it is nonetheless the case that the services are offered to the same purchasers, namely golfers. Obviously, registrant's mail order brochure services featuring golf equipment are directed to golfers, and of course applicant's promotional and advertising services, cable television programming and broadcasting services, and internet services, all of which are "golf-related", are directed to golfers. In view of the foregoing, we find that applicant's and registrant's services are sufficiently related that confusion as to source, sponsorship, or affiliation would be likely. In particular, golfers who are familiar with registrant's mail order brochure services featuring golf equipment, upon encountering applicant's various golf-related services, may well believe that registrant and applicant are somehow affiliated or that applicant is an endorser or sponsor of the golf equipment sold through registrant's services.

In reaching our conclusion that the services are related, we have accorded little weight to the third-party registrations submitted by the Examining Attorney because

only one is for a mark which covers any of applicant's services and the specific services in the cited registration. The remainder of the registrations are for marks which cover television programming and/or broadcasting services, on the one hand, and retail store or on-line retail services, on the other hand. Such registrations are not particularly probative of whether companies generally offer television broadcasting and programming services and mail order brochure services under the same marks.

With respect to applicant's argument that the purchasers of the services involved herein are sophisticated, nothing in this record persuades us that purchasers of the types of services recited in the application and the registration are necessarily sophisticated purchasers who would be immune to source confusion when faced with the similar marks and related services involved in this case. See Refreshment Machinery Incorporated v. Reed Industries, Inc., 196 USPQ 840 (TTAB 1977).

In sum, we find that in view of the substantial similarity in the commercial impressions of applicant's mark and registrant's mark, their contemporaneous use on the closely related services involved in this case is

likely to cause confusion as to the source or sponsorship of such services.

Decision: The refusal to register under Section 2(d) of the Trademark Act is affirmed.